

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

15CV2225

Mario Voldiviezo

(in the space above enter the full name(s) of the plaintiff(s).)

-against-

The City of New York

Dect: Kimberly Marshall

Edward Friedman

COMPLAINT

under the

Civil Rights Act, 42 U.S.C. § 1983

(Prisoner Complaint)

Jury Trial: Yes No

(check one)

RECEIVED
SONY PRO SE OFFICE

115 MAR 24 P 12:04

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

Parties in this complaint:

A. List your name, identification number, and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff

Name Mario Voldiviezo

ID # 11578161R

Current Institution G.I. M. D.C

Address 15-15 Hazen St

East Elmhurst, NY 11370

B. List all defendants' names, positions, places of employment, and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1

Name The City of New York

Shield # _____

Where Currently Employed _____

Address _____

Defendant No. 2

Name Kimberly Marshall Shield # 750
Where Currently Employed NYPD
Address Brooklyn Special Victims Squad

Defendant No. 3

Name Edward Friedman Shield # _____
Where Currently Employed _____
Address 26 Court Street Suite 1903
Brooklyn, NY 11242

Defendant No. 4

Name _____ Shield # _____
Where Currently Employed _____
Address _____

Defendant No. 5

Name _____ Shield # _____
Where Currently Employed _____
Address _____

II. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. In what institution did the events giving rise to your claim(s) occur?

66 Precinct Brooklyn, NY 11218

B. Where in the institution did the events giving rise to your claim(s) occur?

Storage room

C. What date and approximate time did the events giving rise to your claim(s) occur?

Feb 28, 2013 at around 11:15 PM

Statements of Facts!

On the day of Feb 28, 2013 I was arrested at the 66 precinct for a misdemeanor, which was dismissed months later.

I was detain at the precinct 66, since 5:45 pm, awaiting into they could charge me with another case. At around 11:15pm, I was interview by Detct Kimberly Marshall, shield # 750 and P.O Cruz, but didnt have the interpret I had have requested earlier, since my english is not too good, Violating my New York constitution Article 1 "Bill of Rights" Section §11 (equal Protection of laws, discrimination in civil rights prohibited): No person shall be denied the equal protection of the laws of this state or any subdivision thereof: No person shall, because of race, color, creed or religion, be subjected to any discrimination in his Civil rights by any other Person or by any agency or subdivision of the state. However I did spoke to Detct Marshall with some difficulties, but I was Never read, reminded, show, or offered by them any Miranda rights, beverages, food or bathroom break, Neither decline the offer like they falsely stated, since I was there from 5:45pm after a long day from work. Violating Not only my New York Constitution Article 1 Section 11, but also my 14th Amendment from my U.S Constitution.

In my interview with detct Marshall, she subjetected to give her a statement for the Judge, so I could go home, Not knowing of my rights, being my first time arrested and trying to be cooperative and Not knowing the reason I was been arrested, I wrote a statement, there's a verbal statement as well, were I mention knowing Ms. Morris two years ago, having sex with her 4 to 5 times and her been 17 at the time, but according to Detct Marshall

notes I had say 16 and not 17 years old. (Exhibit 4)

Verbal statement Not signed by me or writing by me.

According to statement by Det Marshall there's a DVD and a Hard drive found hidden together in the back of a Closet bedroom (Exhibit 2) but on a statement signed by Ms Hernandez (Ms Moreno's Cousin) were she state the she found on 2/27/13 inside a Bookbag, the DVD (sex video) There's no mention of any Hard drive been found inside a Bookbag hidden in the back of any closet bedroom. (Exhibit 2) "There were No closet at all."

Hard drive the I have requested to see it since I have no recollection of any hard drive being in any bookbag. However I do have a Hard drive in my livingroom placed together with my DJ equipment which I use to store all my music, item the

it sure had have never been Seizure without a Warrant

Violating my IV amendment: The right of the people to be secure in their houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Based on Ms Marshall Opinion and Not Facts, the hard drive contains evidence related to the crime I being falsely accuse (Exhibit 3) which the report come back Negative, no videos or images matching the requested criteria.

On March 6, 2013 the date of my indictment, the City of New York Violate my 1st, 5th and 14th Amendments of my U.S. Constitution by depriving my right to a Grand Jury, denied the liberty

of speech or of the press to defend my self.
Due to the Ineffective Assistance of Counsel, on July 16, 2013
I have put a motion for Bail reduction, which was denied to the
oppose of the A.D.A, mentioning the I was a flight Risk, I mentioned
my Counsel at the time, Mrs ZISA SALVATORE, The I am a legal resident
the I have family and a daughter to support, and if I went it to
leave the country I Would had have took the offer to plea
guilty to a Non Violent Crime and have sign my deportation
like they were offering me, to what my counsel just keep quiet
Violating my 8th and 14th Amendment of my U.S Constitution.

(Exhibits) I also sent 2 Motions on January 19, 2014 (30.30 /
(Exhibit 6) Defective indictment for Multiplicities and duplicates Counts)
which it was never mentioned, answer, or even denied. I question
Ms Salvatore many times about my motions, but never got an answer
till Dec 8, 2014 before I got appointed to a new Counsel, to what
she reply "Motions made by inmates are never take into consideration"
So Why is the reason the City of New York have D.O.C.C placing
motions available to detainees?
The Court not acknowledge my 2 motions from January 2014
and the ineffective Assistance of Counsel is a violation of my
1st amendment (the right to petition the government to correct injustices)
5th amendment (right not to be put in double jeopardy) due to my
duplicates and Multiplicities counts. 6th amendment (right to speedy trial)
14th amendment (Deny to any person the equal protection of the law)
and my New York state Constitution, Article 1, Section 6 (The right to
effective Counsel)

on the same day Dec 8, 2014 my new counsel Mr Edward Friedman introduce him self and I was told he would contact me before the court date, which never happen, and on January 23, 2015 I actually got to talk to Mr Friedman for the first time, and I was told by him unprofessionally to just cop out, without even want to heard my side of events or analyzing the whole case, to just take a plea and not go to a trial the is lost, But if I did want to go to trial, he wouldn't mind get the 70\$ dollars an hour! it was clearly he didn't met the standards of section 3.1 (a) of the American Bar Association, and his ability to represent me properly. I understand the counsel have the right to advise the client, but I would think the for a better defense or advise, the counsel have the obligation to heard the client side of events. On Dec 12, 2014 I put a motion for reassignment of counsel, and on the day of court January 23, 2015 I was told by the judge the this is not a reason the I could have what I want, and I was asked what was the reason I can't communicate with Mr Friedman, making it an issue of lack of English on my part, disregarding or mentioning the real reason explaining in my motion or let me know if my motion was denied.

Now I am stuck by the Court with a counsel who have no communication with me, who have no faith on me, till this date March 12, 2015 had have only 1 Video Conference who refuses to heard my side of events or take notes in anything I have to say, investigate, or bring the witnesses I have asked for my defense, violating my 6th and 14th amendment of my U.S. Constitution and my New York Constitution Article 1 Section 6

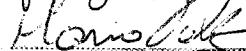
But more importantly, bringing me to a trial the I have no idea of how he is going to go about, trial the he knows his not going to represent me Properly or Fair.

Based on the above and the continue Violations of my Constitutional rights, The unfair Coming up trial, jeopardizing my life and freedom, and denial the equal protection of the laws.

I respectfully request that the Court take any action it may deem appropriate and proper to defendants Marshall and Friedman for improper use of authority, Wrongful acts, ineffective assistance of Counsel and Violation of my Constitutional rights

I also request monetary Compensation of (3) three million dollars for the city of New York and members of the law and justice department of New York Violated my 1st, 4th, 5th, 6th, 8th and 14th amendments of my Constitutional rights and for the Court to disregard my Mental state of Mind, but the most important reason the I bring this complaint under the Civil rights act, 42 U.S.C § 1983 is not to argue about my criminal charge case, but to have my rights Protected under the U. S. Constitution, so I could have an effective Counsel and a Fair trial.

Respectfully submitted



Mario Voldivez

March 12, 2015

when and how, and their response, if any: _____

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies: _____

Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.

V. Relief:

State what you want the Court to do for you (including the amount of monetary compensation, if any, that you are seeking and the basis for such amount). I respectfully request the court to protect my rights, take any action appropriate and proper to the defendants Marshall and Friedman and for the violation of my rights, suffering and mental illness the city is making me go through I request monetary compensation of (3) three million dollars.

VI. Previous lawsuits:

On
these
claims

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?
Yes ____ No

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 12 day of March, 2015

Signature of Plaintiff

Inmate Number

Institution Address


11578161 R

15-15 Hazen St
East Elmhurst, NY 11370

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint and provide their inmate numbers and addresses.

I declare under penalty of perjury that on this 12 day of March, 2015 I am delivering this complaint to prison authorities to be mailed to the Pro Se Office of the United States District Court for the Southern District of New York.

Signature of Plaintiff:



8. On March 5, 2013, I watched the video recordings on the aforementioned DVD with Skylee Marrero. Skylee Marrero identified herself and Mario Valdiviezo on each recording and identified the location during each video as the Defendant's bedroom at 6408 New Utrecht Avenue in Kings County.

9. On February 28, 2013, I arrested Mario Valdiviezo for the rape of Skylee Marrero.

10. I am informed by Assistant District Attorney Olatokunbo Olaniyan of the Kings County District Attorney's office that the Defendant was subsequently indicted by a Kings County Grand Jury for Use of a Child in a Sexual Performance, Possessing a Sexual Performance by a Child, Rape in the Second Degree, Endangering the Welfare of a Child, and other related charges.

11. The aforementioned gray hard drive with serial number E101559 is currently within the possession of the New York City Police Department under property clerk invoice number 3000189256.

12. Based on the above, and my training and experience, it is my opinion that the hard drive contains evidence related to the crimes of Use of a Child in a Sexual Performance, Possessing a Sexual Performance by a Child, Rape in the Second Degree, Endangering the Welfare of a Child, and the other related charges for which the Defendant stands indicted.

I request that any examination by this Court and the sworn and stenographically transcribed minutes thereof be incorporated by reference into and made a part of this application.

I further request that the minutes of any examination conducted by this Court be sealed except for one copy, which will be maintained by the Sex Crimes Bureau of the Kings County District Attorney's Office until needed for the prosecution resulting from the execution of this warrant.

WHEREFORE, I respectfully request that the Court issue a warrant and order for seizure, in the form annexed, authorizing a search and forensic examination of the gray external hard drive serial number E101559 recovered from a bedroom closet in 6408 New Utrecht Avenue in Kings County. I further request that any property seized from the forensic examination and search be stored at the offices of the New York City Police Department and that a written inventory be brought before this Court.

I further respectfully request that the Court take any additional action it may deem appropriate and proper.

False Statements Made in this Document Are
Punishable as a Class A Misdemeanor Pursuant to
Section 210.45 of the Penal Law.


Detective Kimberly Marshall, Shield #750

Sworn to before me this
4th day of October, 2013

JSC

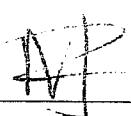

HON. NEIL JON FIRETOG

Exhibit 3

Exhibit 1
Recovered from a
Bed Room CLOSET ?

Page 2 of the NYS Domestic Incident Report:
STATEMENT OF ALLEGATIONS / SUPPORTING DEPOSITION

Suspect Name (Last, First, M.I.)

Valid Through, MARCH

I, Delia (victim/deponent name), state that on 2/26/13, (date) at 10:00 pm
Yo, (nombre de victim/deponente), declaro que en tal fecha / / en

(location of incident), in the County/City/Town/Village of _____, of the state of New York, the following did occur:
(donde el incidente ocurrió), el condado/ciudad/aldea/pueblo de _____, del estado de Nueva York, lo siguiente ocurrió:

I had a argument with Mario Vallenero in the month of November about a video In his laptop of sex. The video disappear. In the month of 2/25/13 at around 10:pm mario come home from work and we argued about how [REDACTED] abt and the video was brought up of him and my 1:1 cousin making sex video. I started to pack my stuff when all Mario clothes falls down and a gun is on the floor Mario picked it up and says saying :(" I keep on with the video shit that he should use it on me. I got scared. And the nite of 2/27/13 I found in Mario Book Bag the sex video of Mario and Sky. He put the gun under the Bed.

~~*EXhibit 2~~

(Use additional pages as needed)

False Statements made herein are punishable as a Class A Misdemeanor, pursuant to section 210.45 of the Penal Law.
Declaraciones falsas hechas aqui son castigables como una clase de delito menor, de acuerdo con la sección 210.45 de la
ley penal.

Victim/Deponent Signature
Firma de víctima/deponente

Date /
Fecha

Date
Fecha

Note:
Whether or not this form is signed, this DIR form will be filed with law enforcement.

Interpreter

Date

Si esta forma esta firmada, o no, esta DIR forma sera registrada con la policia.

Witness or Officer

10

EXHIBIT 4

0408 New

Utrecht 28.

Valdiviezo, Mario.

91.3176.

(917) 676-0272.

10/01. Sasha Vallinquez.

2316.

Yr had sex.

2 year ago.

48: Xmas.

16.

Yes. Video

Exhibit 5

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ~~Kings~~ p420

THE PEOPLE OF THE STATE OF NEW YORK,

RESPONDENT,

-AGAINST-

Mario Volpicello

DEFENDANT

NOTICE OF MOTION
TO DISMISS
INDICTMENT FOR
DENIAL OF RIGHT
TO SPEEDY TRIAL
PURSUANT TO
CPL § 30.20/30.30

Docket No. 201361016260
Indict. No. 01936/2013
NYSID No. 11578161R

PLEASE TAKE NOTICE, that upon the annexed affidavit of Mario Volpicello, duly affirmed the 17th day of January, 2014, and upon the indictment and all the proceedings had herein, the undersigned will move this Court Kings County Supreme thereof, to be held at the courthouse located at 320 Jay Street, county of Kings, on the 24th day of January, 2014, at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order dismissing the indictment herein, upon the ground that the defendant has been denied his right to a speedy trial as guaranteed by the Sixth Amendment of the United States Constitution and pursuant to sections 30.20 and 30.30 of the New York State Criminal Procedure Law, and any further relief as the court may deem just and proper.

Yours, etc...

Stefan D. DeSantis
DEFENDANT

141-13-02680

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF Kings

THE PEOPLE OF THE STATE OF NEW YORK,

RESPONDENT,

-AGAINST-

Mario Voldivieso,

DEFENDANT.

STATE OF NEW YORK)
COUNTY OF Bronx) ss:

I, Mario Voldivieso, being duly sworn, deposes and says:

I am the defendant in the above-entitled action, and is personally familiar with the facts and circumstances herein stated.

On the 28th day of February, 2013, a complaint was filed in the Criminal Court of Kings County, charging the said defendant with the offense(s) of Rape 2nd in violation of New York State Penal Law, section(s) 130.30.

Arraignment of the defendant on the above-mentioned complaint took place in this Court on the 1st day of March, 2013, and defendant was held for Grand Jury proceedings. Subsequently, defendant was indicted for the aforementioned charges and was arraigned upon said indictment in Supreme Court,

Kings County, on the 6th day of March, 2013. Plea of guilty has been entered by said defendant but not has a trial been commenced for the aforementioned charge(s).

AFFIDAVIT IN SUPPORT
OF MOTION TO DISMISS
INDICTMENT FOR
DENIAL OF RIGHT
TO SPEEDY TRIAL
PURSUANT TO
CPL § 30.20/30.30

Docket No. 2013-016260
Indict. No. 01936/2013
NYSID No. 1578161K

STATEMENT OF FACTS

The District Attorney's Office has failed to produce the evidence against the defendant. They have violated constitutional mandates under Brady/Krusko. The District Attorney's office has requested adjournments because they are unable to produce the evidence against the defendant within the constraints of the 6th amendment and well as the Fourteenth amendment and the Criminal Procedure Law.

ARGUMENT

Once an accusatory instrument is filed against a defendant, the criminal action and the statutory time limitations involved in the ~~a~~ction, are in effect.

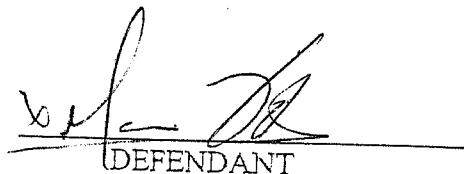
C.P.L. 30.30(1)(a) mandates that the p ~~e~~ople be ready for the trial of a felony within six months, in this case 341 days, from commencement of the criminal action. Failure to be ready within six months will result in dismissal of the indictment unless the prosecution can show that certain ~~t~~ime periods should be excluded.

"Ready for trial" comprises two elements, (i) "either a statement of readiness by the prosecutor in open court, transcribed by a stenographer, or recorded by the clerk, or a written notice of readiness sent by the prosecutor to both defense counsel and the appropriate court clerk" and (ii) the people must in fact be ready to proceed at the time they declare readiness. Delays caused by pre-readiness court congestion do not excuse the People from timely declaring their ~~readin~~ess for trial.

Thus, in the absence of a statement of ~~readiness~~ to proceed, any delay due to court congestion is entirely chargeable to the peopl~~e~~. This delay, for which the said defendant is not responsible, has resulted in a denial of ~~t~~he said defendant's right to a speedy trial, as guaranteed by sections 30.20 and 30.30 of the New York State Criminal Procedure Law and the Sixth Amendment of the United States Constitution as made applicable to the States by the Due Process Clause of the Fourt ~~s~~enth Amendment.

WHEREFORE, this petitioner respectfully prays that an order be issued granting this motion pursuant to the aforesaid sections of the New York State Criminal Procedure Law, and taking into consideration the facts and argument annexed herein, or, in the alternative, an order be issued granting partial relief, or whatever relief the Court sees and deems fit and appropriate to insure the swift and proper administration of justice.

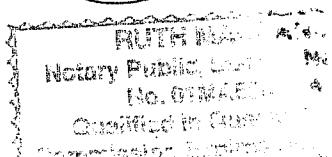
Yours, etc...



DEFENDANT

Sworn to before me this
17th day of January, 2011

~~NOTARY PUBLIC / COMMISSIONER OF DEEDS~~



AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF Bronx) ss:

I, Mario V. Diaz

, being duly sworn deposes and says:

That I have on the 17th day of January, 2014, placed and submitted the original and copies of this motion to be duly mailed via the United States Postal Service, through the institutional mail room of the GRC Correctional Facility. Said moving papers were mailed to the following concerned parties:

District Attorney
Kings County
350 Jay St.
Brooklyn, NY 11201

Supreme Court
Kings County
350 Jay Street
Brooklyn, NY 11201

Lisa Solis, Defense Counsel

Yours, etc...

X Mario Diaz
DEFENDANT

Sworn to before me this
17th day of January, 2014

Notary Public / Commissioner of Deeds

NOTARY PUBLIC
State of New York
Notary Public, County of Bronx
No. 012345678
Qualified in Bronx
Commission Expires 12/31/2014

EXHIBIT 6

SUPREME COURT STATE OF NEW YORK

COUNTY OF Kings PART 2D

THE PEOPLE OF THE STATE OF NEW YORK

-against-

Mario Voldivio

Defendant

NOTICE OF MOTION

CPL §210.20/210.25

Ind#: 01936/2013

PLEASE TAKE NOTICE that upon the annexed duly verified affidavit of Mario Voldivio and

upon the indictment filed against the above named defendant in this Court on the

March 6, 2013, and upon the arraignment had herein, the undersigned will move this

Court at a part 2D thereof, to be held at the Courthouse located at

320 Toy Street, on the April 1, 2014 at 9:30 o'clock in the forenoon

or as soon thereafter as counsel can be heard for an order dismissing the indictment or a count thereof pursuant to section 210.20 of the Criminal Procedure Law upon the ground that the indictment was found at a defective grand jury proceeding within the meaning of §210.25 of

the Criminal Procedure Law, and upon the further ground that that the indictment is defective within the meaning of CPL §20.50 and § 80.35 of the Criminal Procedure Law and

for such other and further relief that this Court may deem just and proper.

Date: January 18, 2014

Respectfully,

Mario Voldivio

SUPREME COURT STATE OF NEW YORK

COUNTY OF Kings PART 20

THE PEOPLE OF THE STATE OF NEW YORK

-against-

Mario Volobring

Defendant

AFFIDAVIT IN SUPPORT OF MOTION

CPL §210.20/210.25

Ind#: 01936/2013

State of New York)

County of Kings) ss.:

Mario Volobring, being duly sworn deposes and says that I am the defendant in the above entitled action and am personally familiar with the facts herein stated.

The said defendant was indicted by the Grand jury of the County of Kings on the 1st day of March, 2013, charged with the crime of Agg. 2nd in violation of § 130.70 of the Penal Law, a copy of said indictment is annexed hereto marked exhibit . Arraignment of the defendant upon the indictment took place in this Court on the 6th day of March, 2014, to this date no plea of guilty has been entered by said defendant nor has a trial been commenced as to the aforementioned charge.

This application is made upon the ground that the indictment or a count of the indictment was found at a defective Grand Jury proceeding within the meaning of §210.25 of the Criminal Procedure Law in that the statute defining the offense charged in the indictment is

In addition, the counts in the defendant's indictment were duplications. The defendant argues that there is no possible way the Grand Jury could understand the instructions because of the duplicity and more specifically multiplicity of the defendant's indictment. CPL § 200.30.

unconstitutional and invalid because

The defendant was not accorded an opportunity to testify before the grand jury. Defendant's 6th amendment right to effective counsel

was violated because defendant informed his attorney that he wanted to testify and his attorney did not allow him to.
People v. Corona, Alos, the indictment did not conform to the requirements of CPL § 200.50.

No previous application for the relief sought herein has been made.

WHEREFORE, your deponent prays for an order dismissing the indictment and any further relief that this court may deem just and proper.

Sworn to before me this

18th

Respectfully,

Day of January 2014

Notary Public

| |
|--|
| Notary Public, State of New York Reg. No. 64-11111 Qualified in County of New York Commissioner of Seal Date of Commission: 17 |
|--|

AFFIDAVIT OF SERVICE

STATE OF NEW YORK }
COUNTY OF Anony }
S.S.

I, Mario Valderrama, being duly sworn deposes and says:

That I have on the 18th day of January, 2014, placed and submitted the original and copies of this motion to be duly mailed via the United States Postal Service, through the institutional mailroom of the Cane Correctional Facility. Said moving papers were mailed to the following concerned parties:

District Attorney

Kings County
350 Jay Street
Brooklyn, NY 11201

Supreme Court

Kings County
350 Jay Street
Brooklyn, NY 11201

, Defense Counsel

Respectfully submitted,

Mario Valderrama
Defendant

11113 02680

Sworn to before me

This 18th day of January, 2014

NOTARY PUBLIC COMMISSIONER OF DEEDS



Exhibit 7

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF : CRIMINAL TERM PART

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

NOTICE OF MOTION FOR
REASSIGNMENT OF COUNSEL
COUNTY LAW § 722-C

Indictment No. 01936/2013

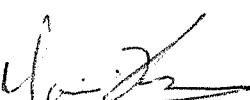
S.I.R.S.

PLEASE TAKE NOTICE that upon the annexed affidavit of Mario Voldiviez, and upon all the proceedings heretofore had herein the above named defendant being duly sworn to this 1 day of December, 2014 will move this Court at a Term, Part 5D thereof to be held at the Courthouse located at 320 Jay Street, Brooklyn, New York, on the 1 day of January 23, 2015 at 9:30 A.M. of that day or soon thereafter as defendant can be heard for an order pursuant to Article 18-B and section 772-C of the County Law; requesting that the Court authorize the services Nunc Pro Tunc of the reassigning of counsel and the assigning of a private investigator for the defendant to prepare his defense herein, and for such other and further relief as to this Court deems just and proper.

Respectfully Submitted,

To: Hon. _____, Esq.,
District Attorney
County of

✓ Defendant
15 - 15 Hazen Street
East Elmhurst, NY 11370



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF : CRIMINAL TERM PART

AFFIDAVIT IN SUPPORT

THE PEOPLE OF THE STATE OF NEW YORK,

Indictment No. 01936/2013

- against -

Louis Voldivizo, Defendant.

STATE OF NEW YORK)
COUNTY OF)ss.

I, Louis Voldivizo, being duly sworn, deposes and says:

1. That I am a detainee presently being incarcerated at George Motchan Detention Center, Rikers Island, listed under the mailing address of 15-15 Hazen Street, East Elmhurst, New York 11370.
2. Whereupon, although I am personally familiar with all of the facts and statements hereinafter stated to the best of my knowledge, information and belief; I am a layperson in matters of the law and seek this Court's indulgence for errors, omissions, defects and irregularities pursuant to Civil Practice Law and Rules sections 2001 and 2101(F) thereof.
3. I am the defendant in the above entitled action and make this Affidavit in Support of a Motion to Reassign Counsel, ordering such services Nunc Pro Tunc and assign a private investigator pursuant to County Law section 722 - C and Article 18 - B thereof.
4. I am being charged with the offense(s) of Rape 2nd degree

In violation of section(s) 130.30 of the Penal Law.

5. I know that I am being charged with a serious crime and even though I am presumed innocent and need say nothing at my trial, in reality I must have a competent, caring, effective and energetic counsel in the preparation of my defense.
6. This case has been pending for over three months and my present attorney of record, M Edward Friedman, Esq., besides trying to get to "cop a plea" has failed to:
 - A. visit me at my place of confinement;
 - B. inform me of any pertinent motion made, including Bill of Particulars, Omnibus, Suppression, etc., filed on my behalf;
 - C. conduct an investigation in the matter of this action on my behalf;
 - D. make any bail requests or reduction applications on my behalf, just to name a few.
- Whereupon, I feel that my attorney of record has failed to comply with attorney's ethical obligation of defense counsel to client.
7. Taking into consideration that my attorney of record M Edward Friedman, Esq., has a busy practice, my first and only concern is that I am facing long prison time because I lack proper representation and trial to counsel would be meaningless if it did not require effective assistance and substantial aid. See, Powell v. Alabama, 1932, 287 U.S. 45.
8. Hereto, counsel must confer with his client without undue delay and as often as necessary to advise him or her of his rights and to elicit matters of defense or to ascertain that potential defenses are unavailable. Counsel must conduct appropriate investigations, both factual and legal to determine if matters of defense can be developed and to allow himself enough time for reflection and preparation for trial. Coles v. Pevton, 1968, 389 F. 2D 224.
9. While it is the responsibility of an attorney to provide the client with his or her best advice. that attorney must ultimately not only consult, but taken into account the needs and desires of his client. People v. Renaud, 535 N.Y.S. 2D 985.

10. The denial of opportunity for appointed counsel to confer and consult with the accused and to prepare his defense could convert the appoint of counsel into sham and nothing more than a formal compliance with the Constitutional requirement that an accused be given assistance of counsel. Avery v. Alabama, 1940, 308 U.S. 444.
11. The standard endorsed by the American Bar Association Project on Criminal Justice are in part:

Section 3.1 (a) A lawyer must establish a relationship of trust with his client;

Section 3.8 the lawyer has a duty to keep his client informed of the developments in the case and the progress of preparing the defense;

Section 3.8 (c) the interview should be carried out in private and the lawyer protest against barriers to the development of a reasonable lawyer client relationship.

Section 6.1 (b) The commentary in this Section notes that the lawyer's duty is to determine from the knowledge of all the facts whether the client is guilty in law, now in some moral sense, and the lawyer must employ ingenuity to locate witnesses.

12. Further, the right to counsel is guaranteed by the Federal and State Constitutions (U.S. Constitution, Art. I Section 6). The enforcement of this right, however, "calls for more than merely Pro Froma appointment of or service by a member of the Bar. The legal assistance provided must be effective. To insure that it is, trial Judges have a continuing legal duty, duty not to be lightly eschewed, to see to it that the proceedings are conducted with solicitude for the essential rights of the accused. They should carefully evaluate serious complaints about counsel". People v. Median, 44 N.Y.S. 2d 588, 375 N.E. 2d 768; People v. Corona, 1991, 567 N.Y.S. 2d 353.

STATEMENT OF FACTS

on Dec. 8, 2014 My attorney of record Edward Friedman who with a month of notice to get my paper work, not only did he not Video Conference me before the court date, which he say he would do, but also came at me with a Nasty attitude and an unprofessional approach, Not wanting to hear my side of events, stopping me while he was writing few Notes, to tell me the my life was complicated, and went on saying; you did what you did, you enjoy your self now Pay the Consequences!, and the I should take the Plea !! it was clearly the he didnt met the standards of Section 3.1(a) of the American Bar Association, and his ability to represent me properly. With out even analyzing the whole Case he mention to just take the plea and not go to trial, but if I did want to go to trial, he wouldn't mind get the 70\$ an hour.

I feel scare and lost all confidence of being represented properly by a Disinterested lawyer who from started would Violated my rights.

I respectfully request the Court to be Assignment by a Counsel of Spanish speaking so I dont have to deal with a translated or I rather to be ~~sign~~ hire assign Counsel LEAH Mc Milion who I heard is a fair and professional Counsel, some one who could hear me out, analyze, investigate, and could bring all witnesses so I could have a Fair Trial.

Truly yours Mario Diaz

13. Comparing the level of representation now provided by M Edward Friedman, Esq., with the American Bar Association's standards, it becomes self evident that said representation does not measure up to the constitutionality required level.

14. No previous application for the relief sought herein has been made in this or any other Court.

WHEREFORE, M Edward Friedman, Esq., should be ordered relieved and substituted through assignment of another attorney and private investigator assigned thereto, and for such other and further relief as this Court seems just and proper as to defendant's request herein.

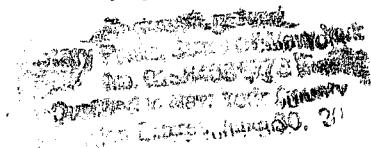
Respectfully Submitted,


Defendant
15 - 15 Hazen Street
East Elmhurst, NY 11370

Sworn to and subscribed to before me
This 12th day of December, 20¹⁴



NOTARY PUBLIC



STATE OF NEW YORK)
ss:
COUNTY OF Bronx)

Name of Document(s)

I, Monie Voltivey, being duly sworn, deposes and says:

That I have on the 12 day of December 2014 place and submitted the within _____ copies of moving paper(s), to be duly mailed via the United States Postal Service, through the institutional mailroom at the _____ located at Hazen St., East Elmhurst, New York. 11370, to the following concerned parties.

Supreme Court
320 Jay Street
Brooklyn, NY 11201

District Attorney
350 Jay street
Brooklyn, NY 11201

Edward Friedman defense Counsel
26 Court street suite 1903
Brooklyn, NY 11242

Respectfully

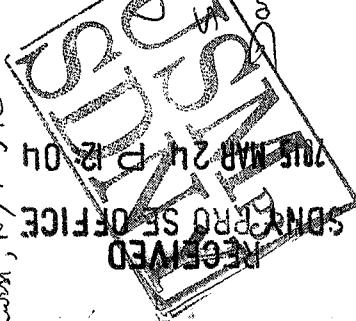


Sworn to before me this

12 day of December 2014

Notary Public, State of New York
No. 01SH4889778
Qualified in New York County
Commission Expires June 30, 2015

Mario Volodin
1411 302680
GPO
15.15 Haven St
East Elmhurst, NY 11370



United States District Court
Southern District of New York
Daniel F. Bilezikian, Clerk
500 Pearl Street, Room 230
New York, NY 10007

